

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JANET MARIE PFEILER
78524 Naples Drive
La Quinta, CA 92253

Registered Nurse License No. 508858

Respondent.

Case No. 2007-76

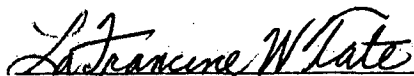
OAH No. 2007030342

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on May 30, 2008.

IT IS SO ORDERED April 30, 2008.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
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Against:

JANET MARIE PFEILER
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La Quinta, CA 92253

Registered Nurse License No. 508858

Respondent.

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OAH No. 2007030342

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings, at Palm Springs, California on February 25, 2008.

Deputy Attorney General Nicholas A. Sanchez represented complainant.

Janet M. Pfeiler (respondent) represented herself.

Oral and documentary evidence was received and the matter was submitted on February 25, 2008.

FACTUAL FINDINGS

1. The First Amended Accusation against respondent was filed by Ruth Ann Terry, M.P.H., R.N. (complainant), while acting in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, State of California (the board).

2. On February 24, 1995, the board issued Registered Nurse License No. 508858 to respondent. Respondent's license was in full force and effect at all times relevant to the instant proceedings.

3. On March 23, 2005, respondent was convicted, in Inyo County Superior Court, Case number MBCRF-04-36210, after entry of a nolo contendere plea, of one count of violating California Penal Code section 487 (grand theft of prescription drugs), a felony crime involving moral turpitude which is substantially related to the qualifications, functions and duties of a licentiate.

4. The facts and circumstances underlying respondent's conviction are as follows: On March 15, 2004, respondent stole 600 tablets¹ containing hydrocodone, a controlled substance and dangerous drug,² from the Vons Pharmacy located in Bishop, California. Respondent took possession of the tablets for her own use even though she did not have a valid prescription for hydrocodone.

5. As a result of the conviction, respondent was placed on five years of formal probation on certain terms and conditions, including complete abstention from the use of alcohol and drugs and successful completion of the Alpine Center drug and alcohol counseling/treatment program (the court ordered program).

Respondent's history of drug use/abuse

Respondent testified truthfully about her drug history. She candidly admitted that her drug problems began long before the events of March 15, 2004. The facts concerning respondent's drug use/abuse follow.

6. Respondent began taking prescription "painkillers" in approximately 1990 after the birth of her first child. Respondent was diagnosed as suffering from depression and began taking Paxil. Respondent did not begin "abusing" "painkillers" until after an automobile accident in 2001 when she was prescribed Vicodin³ for back pain. Respondent stated that the Vicodin "energized" her so she began "using Vicodin regularly."

7. Sometime prior to 2004, respondent became close friends with a pharmacist working at the pharmacy in the Vons grocery store located in Bishop, California. Respondent testified that she and the pharmacist had a "sick" relationship. Respondent helped the pharmacist with her animals, took the pharmacist to lunch and did other favors for the pharmacist. In exchange, the pharmacist supplied respondent with Vicodin. According to respondent, the pharmacist regularly gave respondent bottles containing 500 tablets of Vicodin. Needless to say, respondent became addicted to the Vicodin and "needed the meds to get out of bed." When respondent ran out of Vicodin she became "very depressed."

¹ Respondent stole one bottle containing 500 tablets and a partially filled bottle containing approximately 100 tablets.

² Hydrocodone is listed in Health and Safety Code section 11055, subdivision (b)(j) as a Schedule II controlled narcotic substance. Hydrocodone is classified as a dangerous drug pursuant to Business and Professions Code section 4022.

³ Vicodin is a brand name for tablets/pills that contain hydrocodone.

8. On March 15, 2004, respondent was in the Vons pharmacy. Respondent “needed” more drugs but her friend was not in the pharmacy because she was attending to a family emergency. Respondent waited for the pharmacist in charge to go to the bathroom, went behind the pharmacy counter and took two bottles of Vicodin containing a total of 600 tablets from the shelf where they were stored. Respondent testified that she knew she was being videotaped but did not care because in a way, she wanted to get caught. After store personnel conducted an inventory of the medications and reviewed the pharmacy security videotape to see why the inventory disclosed missing drugs, respondent was arrested and prosecuted for stealing and possessing prescription drugs.

9. On April 15, 2004, respondent “called in a refill” using the name of her friend, D.C. to obtain 60 Vicodin tablets and 12 Toradol⁴ tablets. Respondent knew that by using her friend’s name she was causing false and incorrect entries to be made on records of controlled substances and/or dangerous drugs and that she was obtaining controlled substances and/or dangerous drugs for her own use when she did not have a valid prescription for the drugs.

10. Sometime during March or April 2004 (sometime after respondent’s arrest for theft of prescription drugs), respondent attempted suicide. She had hit rock bottom.

Mitigation

11. There is no indication that respondent’s drug abuse and resultant criminal conduct directly jeopardized the health, safety, or welfare of any patients. At the time of respondent’s 2004 arrest and conviction, respondent was working as a registered nurse at Mammoth Hospital located in Mammoth Lakes, California. In an October 18, 2004 letter, the Mammoth Hospital Chief Executive Officer (CEO) wrote:

“[Respondent’s] addiction and resultant criminal activity, while tragic and sad, does not negate her otherwise exemplary record as a nurse at our hospital. We believe that [respondent’s] recent criminal activity is a result of her addiction, not the other way around. (Exhibit 4, AG-025.)”

Respondent, nonetheless, recognizes and admitted during the hearing that her drug use definitely compromised her ability to be “at the top of her game” as a nurse.

Respondent’s road to recovery

12. Respondent last used/abused controlled substances and/or dangerous drugs on May 5, 2004. Respondent was “three weeks clean and very suicidal” when the police arrived

⁴ Toradol is the trade name for ketorolac tromethamine, a nonsteroidal anti-inflammatory drug that is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

at her residence and arrested her for the March theft of drugs from Vons. When respondent was four weeks "clean" she called her family together and admitted she needed help.

13. On June 3, 2004, respondent self-admitted to the Alpine Center for Counseling and Recovery (Alpine), a drug treatment center located in Bishop, California. Shortly after entering the Alpine facility, respondent persuaded a friend who was a doctor at Alpine to get her into The Betty Ford Center Residential Treatment program so her drug addiction could be more aggressively treated. Respondent was admitted to the Betty Ford Center, Rancho Mirage, California for drug addiction treatment on June 10, 2004. Respondent began participating in the 12-step drug treatment program and remained in the Betty Ford Center until her discharge on September 16, 2004. While in the Betty Ford Center respondent self-reported her problems to the board and entered the California Nursing Diversion Program for Impaired Professionals.

14. On September 20, 2004, after her discharge from the Betty Ford program, respondent returned the Alpine facility in Bishop, California and commenced a one-year intensive out-patient program. As part of the program, respondent attended recovery group meetings four times per week, attended "frequent" Alcoholics Anonymous (AA) meetings in the community and underwent individual therapy. Dr. Dibble, Ph.D., the Director of the Alpine program, reported in an October 12, 2004 letter that:

"[Respondent's] peers have benefited from her positive and helpful attitude. She has spent time with newcomers who are struggling with their recovery, and even volunteered to transport a female peer to Los Angeles to undergo medical treatment. Her willingness to encourage and serve others is very positive evidence of the sincerity of her commitment.

It is unfortunate that [respondent] is facing criminal charges for the theft of narcotics. Obviously, there is no excuse for theft, but I would like to make the following observation. Over more than twenty years in the field of chemical dependency I have learned to distinguish between two types of addicts who end up in legal trouble. There are the criminal types who also have a drug problem, and there are otherwise law-abiding persons whose addiction drives them to cross the line. [Respondent] is clearly in the latter category. (Exhibit 4, AG-020.)"

15. While at Betty Ford, respondent met Dr. Barlow and began treatment for depression. Respondent had a long history of depression and recognizes "depression as one of my main triggers" that led to her use and abuse of drugs. To date, respondent has continued seeing Dr. Barlow on a regular basis.

16. As a result of respondent's March 23, 2005 conviction, respondent enrolled in the Inyo County Drug Program, which is "an intensive program with a legal component." (Exhibit A.) According to Chemical Addiction Specialist (C.A.S.) Claude Peters, respondent

“was one of the first participants to successfully complete all the stringent requirements and graduated in May of 2006.” C.A.S. Peters also reported:

“At the end of her treatment, [respondent] was asked and mentored her peer group members and teenage girls in the community. She also assisted with facilitation of Alpine’s Teen Recovery Group . . . [respondent] has also done educational seminars in the community educating the public and the health care professionals on the subject of alcohol and drug addiction. Her life experiences (struggles and success) have given her great insight into our national epidemic and it is obvious she advocates strong recovery. (Exhibit A.)”

17. In late 2006 or early 2007, respondent moved from Bishop, California to Palm Springs California so she could get a change of environment and commit herself to work at the Betty Ford Center. Respondent was employed as a Registered Nurse at the Betty Ford Center where she worked in “detox stabilizing patients.” In her capacity as a detoxification nurse, respondent administered drugs to patients to control their withdrawal symptoms during the period of detoxification. Respondent worked at the Betty Ford Center for approximately one year, until December 2007.

18. Respondent has maintained her sobriety from May 5, 2004 (respondent’s “sobriety date”) until the present without relapse.

19. Respondent has completed the 12-step recovery program. In fact, she is on her “third time around” and is concentrating on step 4, finances, as that step seems to be the “most difficult step for me.”

20. Respondent testified that “sobriety gave me great strength to live one day at a time. I am a better mother, I left a bad marriage, and now have the strength to pursue child custody.”

21. Currently, respondent is active in the “recovery community” and attends AA meetings two or three times per week and attends Narcotics Anonymous (NA) meetings one time per week, on Saturday.

22. Respondent’s ex-husband, their 11-year-old daughter and their 17-year-old son have all attended addiction programs at Betty Ford.

23. Respondent’s daughter is a high school senior and lives with respondent.

24. Respondent testified that she became a nurse “right after I got married and I have an overwhelming need to help people.” Respondent also testified that she is currently unemployed and wants to wait for the outcome of the instant hearing before making an employment commitment. Respondent would like to work as an acute care nurse at the Eisenhower Clinic and she is current on her continuing education.

Cost recovery

25. The reasonable costs of the investigation and enforcement of this matter total \$8,308.25.

26. Respondent lacks the ability to pay cost recovery. Respondent is currently unemployed and awaiting the outcome of the instant hearing before applying for a full-time acute care nursing position. Respondent borrowed money from her parents to pay court costs, legal fees, fines, and to pay for her recovery programs. She owes her parents approximately \$65,000.00. Additionally, she owes attorney fees in the amount of \$16,000.00 for the criminal proceedings, divorce proceedings, and child custody proceedings. Respondent pays her parents \$600 per month and has a \$1,700 per month rent/house payment. Respondent's monthly payments for rent and debt total \$2,300.00. Additionally, respondent has food and clothing, transportation, utilities and other various and sundry monthly expenses for herself and her daughter. In view of respondent's current financial situation it would not be just, fair and equitable to further burden respondent by imposing an additional \$8,308.25 debt on her.

LEGAL CONCLUSIONS

1. Cause for discipline exists pursuant to California Business and Professions Code sections 2761 and 2762 because respondent's conviction, as set forth in Finding 3, resulted from her theft and possession of drugs in violation of Penal Code section 487.

2. Cause for discipline exists pursuant to California Business and Professions Code section 2761, subdivision (a) because the acts underlying respondent's conviction, as set forth in Findings 4 and 8, constitute unprofessional conduct as defined by California Business and Professions Code section 2762, subdivisions (a), (b), and (c).

3. Cause for discipline exists pursuant to California Business and Professions Code sections 490 and 2761, subdivision (f) because respondent's conviction, as set forth in Finding 3, is for a crime substantially related to the qualifications, functions and duties of a licensee pursuant to California Code of Regulations, title 16, section 1444, subdivision (c).

4. Cause for discipline exists pursuant to California Business and Professions Code sections 2761, subdivision (a) and 2762, subdivision (e) because respondent's conduct, as described in Finding 9, led to the falsification of entries in pharmacy records concerning the dispensing of controlled substances and/or dangerous drugs.

5. Respondent admits that she is a recovering addict and that her conduct resulted from her use and abuse of prescription drugs. The question is whether respondent has her addiction under control and can practice nursing safely. A thorough review of the evidence indicates that respondent can, at this time, safely practice nursing. However, the evidence

considered as a whole also reveals that respondent and the public would benefit from implementation of certain conditions on respondent's ability to practice.

6. The reasonable costs of the investigation and enforcement of this matter recoverable by the board pursuant to Business and Professions Code section 125.3, total \$8,308.25 (Finding 25).

7. As noted in Finding 26, respondent does not have the ability to pay any of the cost recovery requested by the board.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Complainant's request for cost recovery is denied based on respondent's inability to pay.

Registered Nurse License number 508858, issued to respondent Janet M. Pfeiler, is revoked. However, the revocation is stayed and respondent is placed on probation for three (3) years on the following terms and conditions:⁵

1. Respondent shall obey all federal, state, and local laws. A full and detailed account of any and all violations of law shall be reported by respondent to the board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

2. Respondent shall fully comply with the conditions of the Probation Program established by the board and cooperate fully with representatives of the board in its monitoring and investigation of respondent's compliance with the board's Probation Program. Respondent shall inform the board in writing within 15 days of any address change and shall at all times maintain an active, current license status with the board, including during any period of suspension. Upon successful completion of probation respondent's license shall be fully restored.

3. Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the board or its designated representatives.

⁵ Each condition of probation contained herein is a separate and distinct condition. If any condition of this Decision and Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Decision and Order, and all other applications thereof, shall not be affected. Each condition of this Decision and Order shall be separately valid and enforceable to the fullest extent permitted by law.

4. Periods of residency or practice as a registered nurse or nurse practitioner outside of California shall not apply toward a reduction of this probation time period. Respondent's probation shall be tolled, if and when she resides outside of California. Respondent shall provide written notice to the board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in California.

5. Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the board or its representatives.

6. Respondent shall provide a copy of this Decision and Order to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

7. Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for six consecutive months or as determined by the board.

a. For purposes of compliance with this section, practicing as a registered nurse may include, when approved by the board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

b. The board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for six consecutive months or as determined by the board.

c. If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to allow respondent to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

8. Respondent shall obtain prior approval from the board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the board all performance evaluations and other employment related reports as a registered nurse upon request of the board.

a. Respondent shall provide a copy of this Decision and Order to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

b. In addition to the above, respondent shall notify the board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall also notify the board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health related employment with a full explanation of the circumstances surrounding the termination or separation.

9. Respondent shall obtain prior approval from the board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or any education or training that includes patient care.

a. Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the board, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

b. Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

1. Maximum—The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

2. Moderate—The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

3. Minimum—The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

4. Home Health Care—If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the board, periodic, on-site visits to patients' homes visited by respondent with or without respondent's presence.

10. Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

a. Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits

have been approved by the board. Respondent shall not work in any other registered nursing occupations where home visits are required.

b. Respondent shall not work in any health care setting as a supervisor of registered nurses. The board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

c. Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a board approved continuing education program.

d. Respondent shall work only on a regularly assigned, identified and predetermined worksite and shall not work in a float capacity.

e. If respondent is working or intends to work in excess of 40 hours per week, the board may request documentation to determine whether there should be restrictions on the hours of work.

11. If respondent violates the conditions of her probation, the board, after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of respondent's license.

If, during the term of probation, an accusation or petition to revoke probation has been filed against respondent's license, or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license and/or certificate, the probationary period shall automatically be extended and shall not expire until the accusation and/or petition to revoke probation has been acted upon by the board.

12. During respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender her license(s) to the board. The board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license(s) and wall certificates, respondent will no longer be subject to the conditions of probation.

a. Surrender of respondent's license(s) shall be considered a disciplinary action and shall become a part of respondent's license history with the board. A registered nurse or nurse practitioner whose license(s) have been surrendered may petition the board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

(1) Two years for reinstatement of a license or certificate that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license or certificate surrendered for a mental or physical illness.

13. During each week of probation respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or the equivalent (e.g. Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the board during the entire period of probation. Respondent shall continue with any recovery plan recommended by a treatment/rehabilitation program or a licensed mental health care examiner and/or other ongoing recovery group(s).

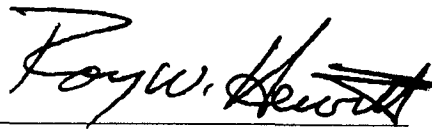
14. Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood-altering) drugs, dangerous drugs and controlled substances, except when the same are ordered by a health care professional legally authorized to do so and are part of a documented medical treatment. Respondent shall have sent to the board, in writing and within fourteen (14) days, by the prescribing physician or dentist, a report identifying the medication, dosage, the date the medication was prescribed, respondent's prognosis, the date the medication will no longer be required, and the effect on respondent's recovery plan, if any. Respondent shall identify for the board a single physician, nurse practitioner, or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent related to dangerous drugs, controlled substances, or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

15. Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program approved by the board. The length of time and frequency will be subject to board approval. Respondent is responsible for keeping the board informed of her current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the board, as directed. Any confirmed positive findings shall be reported immediately to the board by the program and respondent shall be considered in violation of her probation. In addition, respondent, at any time during the period of probation, shall fully cooperate with the board or any of its representatives, and shall, when requested, submit to such tests and samples as the board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances. If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the board files a petition to revoke probation or an accusation, the board may

suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation.

16. Respondent, at her expense, shall participate in an on-going counseling program until such time as the board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

DATED: March 14, 2008

A handwritten signature in black ink, appearing to read "Roy W. Hewitt", written over a horizontal line.

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

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8
9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

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15 Registered Nurse License No. 508858

16 Respondent.

Case No. 2007-76

OAH No. 2007030342

FIRST AMENDED ACCUSATION

17
18 Complainant alleges:

19 PARTIES

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Amended
21 Accusation solely in her official capacity as the Executive Officer of the Board of Registered
22 Nursing, Department of Consumer Affairs (Board).

23 2. On or about February 24, 1995, the Board issued Registered Nurse License
24 No. 508858 to Janet Marie Pfeiler (Respondent). The Registered Nurse License was in full force
25 and effect at all times relevant to the charges brought herein and will expire on January 31, 2009,
26 unless renewed.

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3. This Amended Accusation is brought before the Board, under the authority

4. Section 492 states:

“Notwithstanding any other provision of law, successful completion of any program under the Penal Code, or successful completion of an alcohol and drug treatment program under Article 5 (commencing with Section 23249.50) of Chapter 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct. Notwithstanding that evidence of that misconduct may be recorded in a record of arrest.

“This section shall not be construed to apply to any drug diversion program by any agency established under Division 2 (commencing with Section 500) of this title that is the subject of a legislative initiative act referred to in that division.”

5. Section 2750 provides, in pertinent part, that the Board may discipline any licensee holding a temporary or an inactive license, for any reason provided in section 2750) of the Nursing Practice Act.

6. Section 2761 states, in pertinent part:

“The board may take disciplinary action against a certified or licensed nurse or
 a person applying for a certificate or license for any of the following:

“(a) Unprofessional conduct, . . .

• • • •

“(d) Violating or attempting to violate, directly or indirectly, or assisting in or
violating of, or conspiring to violate any provision or term of this chapter [the
ce Act] or regulations adopted pursuant to it.

• • • •

1 “(h) Impersonating another certified or licensed practitioner, or permitting or
2 allowing another person to use his or her certificate or license for the purpose of nursing the sick
3 or afflicted. . . .”

4 7. Section 2762 states, in pertinent part:

5 “In addition to other acts constituting unprofessional conduct within the meaning
6 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed
7 under this chapter to do any of the following:

8 “(a) Obtain or possess in violation of law, or prescribe, or except as directed by a
9 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish
10 or administer to another, any controlled substance as defined in Division 10 (commencing with
11 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
12 defined in Section 4022.

13 “(b) Use any controlled substance as defined in Division 10 (commencing with
14 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as
15 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
16 injurious to himself or herself, any other person, or the public or to the extent that such use
17 impairs his or her ability to conduct with safety to the public the practice authorized by his or her
18 license.

19

20 “(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible
21 entries in any hospital, patient, or other record pertaining to the substances described in
22 subdivision (a) of this section.”

23 8. Section 2764 provides, in pertinent part, that the expiration of a license
24 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
25 licensee or to render a decision imposing discipline on the license. Under Section 2811,
26 subdivision (b), the Board may renew an expired license at any time within eight years after the
27 expiration.

28 / / /

1 9. Health and Safety Code section 11153, subdivision (a), states in pertinent
2 part that "[a] prescription for a controlled substance shall only be issued for a legitimate medical
3 purpose by an individual practitioner acting in the usual course of his or her professional
4 practice."

5 10. Health and Safety Code section 11170 states that "[n]o person shall
6 prescribe, administer, or furnish a controlled substance for himself."

7 11. Health and Safety Code section 11171 states that "[n]o person shall
8 prescribe, administer, or furnish a controlled substance except under the conditions and in the
9 manner provided by this division [Division 10, commencing with section 11000 of the Health
10 and Safety Code]."

11 12. Health and Safety Code section 11173, subdivision (a), provides that it is
12 illegal to possess a controlled substance without a valid prescription.

13 13. Health and Safety Code section 11350, subdivision (a), states as follows:
14 "Except as otherwise provided in this division [Division 10, commencing with
15 section 11000 of the Health and Safety Code], every person who possesses (1) any controlled
16 substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054,
17 specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in
18 subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2)
19 any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
20 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in
21 this state, shall be punished by imprisonment in the state prison."

22 14. Health and Safety Code section 11368 states:

23 "Every person who forges or alters a prescription or who issues or utters an altered
24 prescription, or who issues or utters a prescription bearing a forged or fictitious signature for any
25 narcotic drug, or who obtains any narcotic drug by any forged, fictitious, or altered prescription,
26 or who has in possession any narcotic drug secured by a forged, fictitious, or altered prescription,
27 shall be punished by imprisonment in the county jail for not less than six months nor more than
28 one year, or in the state prison."

1 15. California Code of Regulations, title 16, section 1444, states:

2 “A conviction or act shall be considered to be substantially related to the
3 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the
4 present or potential unfitness of a registered nurse to practice in a manner consistent with the
5 public health, safety, or welfare. Such convictions or acts shall include but not be limited to the
6 following:

7 “(a) Assaultive or abusive conduct including, but not limited to, those violations
8 listed in subdivision (d) of Penal Code Section 11160.

9 “(b) Failure to comply with any mandatory reporting requirements.

10 “(c) Theft, dishonesty, fraud, or deceit.

11 “(d) Any conviction or act subject to an order of registration pursuant to Section
12 290 of the Penal Code.”

13 16. Section 125.3 provides, in pertinent part, that the Board may request the
14 administrative law judge to direct a licensee found to have committed a violation or violations
15 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case.

17 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

18 17. Hydrocodone is a Schedule II controlled narcotic substance pursuant to
19 Health and Safety Code section 11055(b)(J). Vicodin and Norco are trade/brand names for
20 combination drugs containing hydrocodone and acetaminophen. Hydrocodone is categorized as
21 a dangerous drug pursuant to Business and Professions Code section 4022.

22 18. Toradol, a trade name for ketorolac tromethamine, a nonsteroidal anti-
23 inflammatory drug, is categorized as a dangerous drug pursuant to Business and Professions
24 Code section 4022.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Controlled Substances / Dangerous Drugs)

3 19. Respondent is subject to disciplinary action under sections 492 and 2762,
4 subdivision (a) of the Code, on the grounds of unprofessional conduct, as defined in California
5 Code of Regulation, title 16, section 1444, in that on or about March 23, 2005, Respondent plead
6 no contest for violating Penal Code section 487 (grand theft of prescription drugs), a felony, as
7 follows:

8 a. On or about March 15, 2004, by her own admissions and on videotape,
9 Respondent obtained and possessed approximately ⁶⁰⁰~~1200~~ (RW) pills of hydrocodone, a controlled
10 substance and dangerous drug, by stealing it from store shelves at Vons Pharmacy, Bishop,
11 California, for her own use, without a valid prescription.

12 b. On or about March 23, 2005, in a criminal proceeding entitled *The People*
13 *of the State of California v. Janet Marie Pfeiler*, Respondent was convicted by a plea of no
14 contest for violating Penal Code section 487 (grand theft of prescription drugs), a felony, in the
15 Superior Court of the State of California, County of Inyo, Case No. IC SI CR-F-04-0036210-002.
16 The court deferred entry of the judgment and allowed Respondent to enter into the drug court
17 program. On or about May 17, 2006, following Respondent's completion of the court ordered
18 drug court program, the deferred entry of judgment against Respondent was set aside and the
19 charge against her was dismissed by the court.

20 SECOND CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct - Theft of Controlled Substances)

22 20. Respondent is subject to disciplinary action under sections 492 and 2761,
23 subdivision (a), in conjunction with section 2762, subdivision (a), on the grounds of
24 unprofessional conduct, in that on or about March 15, 2004, by her own admissions and on
25 videotape, Respondent obtained and possessed approximately ⁶⁰⁰~~1200~~ (RW) pills of hydrocodone, a
26 controlled substance and dangerous drug, by stealing it from store shelves at Vons Pharmacy,
27 Bishop, California, for her own use, without a valid prescription.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - False Prescriptions for Controlled Substance/Dangerous Drugs)

3 21. Respondent is subject to disciplinary action under sections 492 and 2761,
4 subdivisions (a) and (h), in conjunction with section 2762, subdivision (e), on the grounds of
5 unprofessional conduct, in that on or about April 15, 2004, by her own admissions, Respondent
6 falsified, or made grossly incorrect entries on records of controlled substances and / or dangerous
7 drugs by impersonating an agent of M. Karch, M.D. by issuing a prescription for patient D.C.¹
8 and obtaining 60 tablets of Vicodin and 12 tablets of Toradol from Vons Pharmacy, Bishop,
9 California, for her own use, without valid prescriptions.

10 FOURTH CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct - Obtain / Possess / Use Controlled Substances/Dangerous Drugs)

12 22. Respondent is subject to disciplinary action under sections 492 and 2761,
13 subdivisions (a) and (d), in conjunction with section 2762, subdivisions (a) and (b), on the
14 grounds of unprofessional conduct, in that by her own admissions, Respondent obtained,
15 possessed and used controlled substances and dangerous drugs, without valid prescriptions, from
16 on or about 2001, through on or about May 5, 2004, violating Health and Safety Code sections
17 11153, subdivision (a), 11170, 11171, 11173, subdivision (a), and 11350, subdivision (a).

18 PRAYER

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein
20 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

21 1. Revoking or suspending Registered Nurse License No. 508858, issued to
22 Janet Marie Pfeiler.


23 2. Ordering Janet Marie Pfeiler to pay the Board of Registered Nursing the
24 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
25 Professions Code section 125.3;

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28 1. Initials are used to protect the privacy of the patient. The patient's full name will be provided following a request for discovery.

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3. Taking such other and further action as deemed necessary and proper.

DATED: 8/30/2007


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

Complainant

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